

SECTION 3 - APPEALS

1 APPEAL TRIBUNAL HEARINGS

A. BENEFIT CASES

1. Introduction

Right to appeal. After an individual's claim for benefits is taken over the phone, a determination will be mailed to both parties (the employer and the claimant). If you disagree with the determination regarding the claimant's eligibility for unemployment benefits, you have the right to make an **appeal**, which is a written request for a hearing.

Hearing. A hearing gives the parties the chance to present their cases before an **administrative law judge** or **ALJ**, who is an attorney. The ALJ conducts the hearing and makes sure that each side has the opportunity to present evidence and give testimony.

The **ALJ's decision**, also called an **Appeal Tribunal Decision** or **ATD**, can change the ruling made in the determination. Having a hearing is like "starting from scratch," as if the determination was never made. Only evidence and testimony presented at the hearing will be considered by the ALJ.

Although the hearing is not a court trial, it *is* a formal proceeding. Witnesses are sworn to tell the truth. Statutory and common law rules of evidence are not controlling. Administrative procedural rules on burden of proof, cross-examination, and limits on the use of hearsay evidence are followed.

2. How to Appeal

a. Filing an appeal

- An appeal must be in writing. To appeal, you must write to the

department stating that you are appealing a determination.

- Include a copy of the determination or identify the determination by its nine-digit number located in the upper left-hand corner of the page.
- Include the claimant's name and social security number, as well as the name of your place of employment and actual worksite address.
- Include dates and times when you and your witnesses and representatives cannot be available for a hearing. The department will attempt to accommodate your request.
- Indicate any special needs such as an interpreter or other accommodations needed due to disability.
- You, your agent, or your attorney must sign the appeal.
- The appeal should be delivered during office hours, mailed, or faxed to the hearing office listed on the back of the determination under WHERE TO FILE AN APPEAL.

Deadline. The appeal must be **post-marked or received within 14 days** of the date on which the determination was issued. The deadline is printed on the determination. The person appealing is called the **appellant**. The person responding to the appeal is called the **respondent**.

b. Late appeals

An appeal that is received or postmarked **after** the deadline specified on the determination is considered a **late appeal**. The hearing office will schedule a hearing to take testimony about why the appeal was late and possibly the merits of the case.

Reasons beyond an appellant's control. The ALJ will determine if the appeal was late for a reason beyond the appellant's control. Work or personal obligations, being out of town, or misreading or misunderstanding the determination generally **are not** considered to be reasons beyond an appellant's control and the ALJ will dismiss the appeal. The determination will remain the final disposition of your case.

Hearing on the merits. If the appellant proves that the reason for the late appeal was beyond his or her control, the ALJ will proceed to the merits of the case or will order that a later hearing be scheduled.

3. Scheduling and Notice of Hearing

a. Scheduling a hearing date

Once a timely request for a hearing for appeal is received, a hearing is scheduled by one of the four regional UI hearing offices. (Hearing office addresses and telephone numbers may be found in Appendix A of this section.) A hearing is usually scheduled within a few weeks after an appeal has been filed.

Parties will be sent a **Notice of Hearing** at least 5 days in advance of the hearing. The Notice contains important information you will need to know about the scheduled hearing, including:

- the **time, date, and location of the hearing**
- whether the parties will appear in person or by telephone
- what issue(s) will be dealt with at the hearing

To see **sample hearing notices**, see Appendix B in this section.

Questions before the hearing. If you have questions about the issue(s) before the hearing, contact the hearing office listed on the Notice of Hearing.

Please read BOTH SIDES OF THE HEARING NOTICE CAREFULLY. Make sure you understand the specified issue or issues and prepare your case with those issues in mind.

b. Scheduling accommodations

When you file an appeal or are notified that the claimant has filed an appeal, **contact the hearing office immediately** to request scheduling accommodations if you have scheduling conflicts in the coming month, such as a pre-planned trip, convention, medical appointment, court date, etc. The **hearing office cannot promise** any specific date and time, but it **may** be able to schedule around the conflict.

However, keep in mind that **parties are expected to make the necessary arrangements** to attend the hearing, including taking time off from work or school.

Postponements of scheduled hearings are granted *only for exceptional circumstances* and must be requested as soon as the need for postponement becomes known.

c. Withdrawals

The appellant may withdraw the appeal at any time before a decision on the merits is issued. **A withdrawal may be by telephone or in writing** to the hearing office listed on the Notice of Hearing.

The determination, which is the last decision made by the department, will remain in effect and become final without further appeal rights.

Ensuring that a hearing occurs. A party who wants to ensure that there is a hearing in a case is advised to file his or her own appeal, even if the other party has also filed one. The hearing will not occur if the first party to file withdraws his or her appeal unless the other party also appealed in a timely fashion.

4. Attendance at the Hearing

a. Introduction

Generally, both the claimant and the employer should attend the hearing. However, an employer is not required to attend if the issue in dispute was raised by the department, such as why the claimant failed to follow required filing procedures or did not accept a valid job offer from a different employer. Contact the hearing office listed on the Notice of Hearing if you have a question about the need to attend.

Follow the instructions on your hearing notice. You must report in person if you are scheduled to appear in person. **If you are scheduled to appear by telephone, you must be available to be reached at the telephone number you provide the hearing office.**

b. Failure to appear at the hearing

Appellant fails to appear. If the appellant (whether claimant or

employer) does not attend the hearing, then the appeal is dismissed. The determination, which is the last decision made by the department, remains in effect and becomes final (unless good cause for failing to appear is shown). The ALJ will wait 15 minutes before dismissing the appeal.

Respondent fails to appear. A respondent who does not attend the hearing gives up the chance to present evidence and testimony at the hearing (unless good cause for failing to appear is shown). The ALJ will wait five minutes before proceeding with the hearing without the respondent.

Good cause for failing to appear. If a party fails to appear for a hearing but believes there was good cause for failing to appear, he or she may provide a written explanation of the reasons for not appearing. Submit the written explanation to the hearing office at any time before the decision is issued and within the 21-day appeal period after the decision is mailed. The ALJ will decide whether to schedule a hearing on the nonappearance issue only, or whether to schedule a hearing on the nonappearance issue and conditionally on the merits of the case.

5. A new hearing on the merits of a case will be scheduled only if good cause for not appearing is established. A person's illness, an accident, or unexpected circumstances that would prevent a person from attending a hearing may be good cause. Forgetting about the hearing, writing the wrong date on your calendar, getting lost, or getting stuck in traffic generally are not considered to be good cause.

5. Telephone Hearings

The department may conduct telephone hearings, that is, hearings in **which one or both of the parties appear by telephone**. (A hearing in which only a non-party witness appears by telephone is not considered a telephone hearing.)

The department makes the final decision on whether a hearing will be by telephone or in person. To request a telephone hearing, the appellant must ask for one in the request for appeal. Alternatively, the respondent must request a telephone hearing within five days of the date on which the **Acknowledgment of Appeal** (the notice that an appeal has been filed) was sent.

A telephone hearing will be presumed suitable when one or more of the parties is located 40 miles or more from the hearing location (which may be different than the hearing office that scheduled the hearing) or when all parties request a telephone hearing.

Considerations in deciding whether a telephone hearing is suitable include whether undue prejudice would result, whether it would allow full and effective cross-examination, the complexity of the issue(s), the expected length of the hearing, the number of witnesses, and the number and complexity of potential exhibits.

Testimony is taken and recorded over the phone; otherwise, all aspects of the hearing remain the same. There are various pros and cons to telephone hearings (For a list of things to think about before requesting a telephone hearing, see Appendix A.)

Appearing in person instead of by phone. A party or witness who is scheduled to appear by telephone may appear in person if he or she notifies the hearing office **in advance**. **A party or witness that is to be contacted by telephone must provide the hearing**

office with a telephone number at which he or she can be reached at the time of the hearing. If that person is not able to be reached at the scheduled time, the appeal may be dismissed or the hearing may proceed without the person or party that was to be phoned. If you plan to have any witnesses, you should contact the hearing office so that arrangements can be made for a conference call.

Submission of exhibits for a telephone hearing. Copies of relevant documents in the hearing file are sent to the parties before the hearing is scheduled. **Any additional documents that a party wants considered by the ALJ during the hearing must be sent to the other party and the hearing office in ADVANCE of the hearing.** Documents that are not properly submitted to the hearing office and the other party may be excluded from consideration by the ALJ.

6. Preparing for the Hearing

a. General information

IMPORTANT: All appeal levels above the hearing level use the record from the hearing to make their decisions. As a result, **it is important to bring and present all relevant information at the hearing.** Since you may get only a few days notice that your hearing has been scheduled, it is *very* important to begin preparing the case right away.

A party may present his or her own case at the hearing or may have an attorney or other representative to present the case and question witnesses. If a party plans to have an attorney or representative at the hearing, that individual must contact the hearing office as soon as possible.

To attend a hearing to see what one is like, contact the hearing office.

To obtain a copy of a tape recording of a hearing, call (608) 266-3174. There is a \$7.00 per tape fee.

Preparing your case. Prior to the hearing, it is helpful to prepare notes of the facts involved in the case for reference during the hearing. Parties should also write down questions for the other party and important points he or she wishes to make to the ALJ.

Because notes are used only to refresh the memory of the notetaker, no party will be allowed to read aloud from them as testimony, nor will any notes be marked as exhibits.

Reviewing your file. A party may review the UI Division file of his or her case at the hearing office listed on the "Notice of Hearing". To make sure the file is available, please call the office in advance. A party may also receive a copy of the file through the mail. Call the hearing office to request copies.

Research. Selected Appeal Tribunal Decisions (ATDs) issued in other hearings are available in a searchable database at www.dwd.state.wi.us/uiibola/bola/atds/ATDsearch.htm.

Prior LIRC and court decisions on the issue in your case. Summaries of court decisions are gathered in multiple volumes of the Unemployment Compensation Digest. These are available at most public libraries, law libraries, and from the department. The Digest is also available at any of the hearing offices or at the administrative office (GEF-1 Building, 201 E. Washington Avenue, Room 331X, Madison). The 1991-94 digest may be found at LIRC's website <http://www.dwd.state.wi.us/lirc/default.htm>. A number of prior LIRC decisions may also be found at LIRC's website. You can review these as well, but keep in mind that **except in most tax cases, LIRC decisions are not precedent-**

setting. (For more information on precedents in tax cases, see sec. B.10 below.)

b. Burden of proof and level of certainty required

Who has the "burden of proof" (that is, who must show that a particular thing is true) depends on the issue or issues involved in that particular case.

Remember that **there is a statutory presumption that a claimant is eligible** for benefits, **unless a specific disqualification** applies.

If a claimant has been discharged, then it is up to the employer to prove that the person is not eligible because she or he was fired for misconduct. It is the **employer's burden** to prove that the reason(s) for the discharge constitutes misconduct.

However, when someone quits a job, the general rule is that a claimant is ineligible for benefits until certain requalifying requirements are met. The **claimant then has the burden** of proving that he or she is eligible because one of the exceptions to the general quit rule applies or because he or she has met the requalification requirements.

Preponderance of the evidence.

The vast majority of cases involve proof by a "preponderance of the evidence". This means that whoever has the burden of proof must show that it is more probable than not that the claim that the party is making is true. For example, if an employer is trying to prove that an employee was fired for misconduct, the employer must convince the ALJ that it is more probable than not that the claimant engaged in misconduct for which he or she was fired.

Clear and convincing evidence. If the employer claims that the person engaged in some criminal behavior (such as theft), then "clear and

convincing evidence” must be provided. This level is higher than “by a preponderance” but is not as high as “beyond a reasonable doubt”. It is a degree of proof that requires a firm belief or conviction in the mind of the ALJ that what you claim is correct.

c. Witnesses

Ask people who have actual personal knowledge and were present to see and hear the events or facts to which they are testifying to be witnesses.

An affidavit or written statement (even if notarized) cannot substitute for the personal appearance of a witness. The witness must be present at the hearing or appear by telephone, be sworn in, and subject to questioning by the ALJ and the other party.

Hearsay. The ALJ cannot make any findings based solely on hearsay testimony, that is, testimony not within the witness’s own personal knowledge.

Example: If you want to present evidence that a worker hit another worker, you should have either the worker who was hit or an eyewitness testify. Both the worker who was hit and the eyewitness have personal, firsthand knowledge of what happened (“Joe hit me”, or “I saw Joe hit him.”), rather than secondhand knowledge or hearsay from a supervisor (“The worker reported to me the next day that Joe hit him.”).

Repetitious testimony. The ALJ will limit repetitious testimony. If several people witnessed a particular incident, you do not have to bring them all. Choose one or two with the best information.

Relevant testimony. The ALJ will not permit testimony from witnesses that is not relevant or not material to the issue(s) involved in the case.

Relevant evidence is evidence that tends to make any important fact more probable than without the evidence.

Subpoenas. If a party is unsure whether a witness will come to the hearing, he or she can require the witness to attend by obtaining a subpoena. For more information about subpoenas, see sec. A.6.f. below.

d. Exhibits

A party may wish to introduce documents or other materials such as payroll or attendance records, check stubs, letters, warnings, medical excuses, work rules, work schedules, reports, photographs, video or audio tapes, charts, objects, sample products, etc., to support a case. However, the ALJ may refuse to accept irrelevant evidence that does not make an important fact more probable than without the evidence.

Photocopies may be submitted, but the original documents should be brought to the hearing to confirm the authenticity of the photocopies. Generally, the person responsible for creating or keeping the records should be present at the hearing to identify, authenticate, and testify about them.

Supplying your own video or audio equipment. If a video or audio recording is important to prove your case, **you must supply the equipment** to play the taped material at the hearing and submit the tape(s) as part of the record while the appeal is pending (after which it may be returned to you).

e. Medical evidence, labor market information or expert testimony and forms

When the department needs to consider medical information in making a decision, it will send out a **standard form UCB-474, "Medical Report to Determine Unemployment Insurance Eligibility"**, for completion by the claimant and his or her doctor. A copy of the completed form is generally provided to both parties before the hearing.

Medical evidence. A certified or verified report by a qualified expert is considered *prima facie* evidence, that is, evidence sufficient to establish the fact at issue unless contradicted and overcome by other evidence. Accordingly, if the doctor returns a **properly completed UCB-474**, then his or her presence at the hearing is not required.

An employer may wish to subpoena the doctor or present an alternate certified or verified report by a qualified expert (or perhaps subpoena a company doctor who examined the claimant) to rebut what the claimant's doctor has said. To see a copy of this form, see Appendix B.

Labor market evidence. In determining a claimant's availability for or ability to work, the department will request labor market information from labor market analysts employed by the state. Labor market analysts are sometimes called as witnesses at hearings. However, in most cases the labor market analysts are able to provide the necessary information on standard forms that can be considered evidence. In such cases the labor market analyst need not appear at the hearing. A copy of the completed form may be available for review before the hearing, if time allows. If the form was not available for viewing before

the hearing and you want to rebut the form, you may ask the ALJ to continue the hearing on a later date. This provides a party with the opportunity to subpoena the labor market analyst or to present other expert testimony about the information in the labor market analyst's report. To see a copy of this form, see Appendix B at the end of this section.

Drug test evidence. In cases involving drug tests, the department may send out its form for completion by the specimen collector and the drug testing laboratory. This certified or verified report is considered *prima facie* (sufficient) evidence of the drug test result, that the result was valid, and that the drug test procedures met certain standards. **A copy of the drug test report received from the lab is not sufficient.** If an employer's case involves a drug test and he or she has not received the forms, call the hearing office listed on the "Notice of Hearing" immediately. To see a copy of these forms, see Appendix B at the end of this section.

f. Subpoenas

If a witness seems reluctant to appear at the hearing voluntarily or if you wish to obtain specified documents, you may ask the hearing office to prepare a subpoena form for you. An attorney representing you may also issue a subpoena. A subpoena requires the witness to appear or requires presentation of the requested documents.

You are responsible for serving the subpoena before the hearing and for providing the required witness fee and mileage payment to the witness. The hearing office will provide further information about serving the subpoena when giving you the form.

7. Prehearing Conferences

ALJs may schedule prehearing conferences pursuant to DWD 140.07. However, they will be used only in the most complex cases.

Following the conference, the ALJ will issue an order about such matters as stipulations about facts (both sides agreeing that certain facts are true), limitations on the number of witnesses, stipulations about evidence, and any other matters that might assist in the disposition of the appeal.

8. The Hearing

a. Accessibility

Most of the hearing locations throughout the state are accessible to persons with physical disabilities. If certain accommodations are necessary to meet your physical needs, you should contact the hearing office immediately so that arrangements can be made.

If you need an interpreter to properly present your case, you should immediately contact the hearing office.

People who are deaf, hard of hearing, or speech-impaired who use a TTY (text telephone) or PC (personal computer) to communicate can contact the hearing office by first calling the WI TRS (Wisconsin Telecommunications Relay System) at 1-800-947-3539.

b. Hearing procedure

Although all UI hearings are open to the public, it is very unusual for a person unrelated to your case to attend. A record is made of the hearing by tape recording. To make sure that a good record of the hearing is made, it is important to speak loudly and clearly, not rustle papers,

and not interrupt, argue or talk at the same time as someone else.

The ALJ will introduce himself or herself, identify the people in the hearing room, explain the hearing procedures, introduce the hearing by summarizing the determination issued by the department, define the issue(s) involved in the case, and ask both parties for brief statements about their positions. The brief statement is not intended to include all the details of your case. Rather, it should provide a quick description of what you are claiming. Two examples are: "I believe the claimant quit" or "I discharged the claimant for misconduct."

The ALJ will determine the order in which the parties and any witnesses testify. Parties and witnesses will be sworn in before they testify. The ALJ is responsible for getting all the information necessary to understand the facts of your case and make a sufficient record of testimony and other evidence presented in order to make a decision in your case. Accordingly, the ALJ will question you and your witnesses.

Cross-examination. In addition to presenting his or her own testimony, a party will be given a chance to ask questions of the other party and his or her witnesses (called cross-examination). It may be helpful to bring a pen and paper to take notes during the testimony. The other party may also cross-examine you and your witnesses.

Cross-examining a witness involves asking questions about that person's testimony or getting him or her to provide additional information important to your case. It does *not* involve providing your own testimony about what happened (you will get your own chance to do that).

For example, the claimant's witness might testify that he worked with the claimant on the same shift and did not see him smoking. You can cross-examine the witness by asking questions such as "Were you with the claimant during the entire shift?" but cannot argue or rebut what he said (by saying, "The supervisor told me he was smoking on the shop floor").

Additional witnesses who have knowledge of the case **may also be called**. These may include UI Division employees, department labor market analysts, etc.

Duties of the ALJ. The ALJ is responsible for controlling the hearing, making sure that the rules of evidence are followed, and protecting the due process rights of both parties. The ALJ may order that witnesses be sequestered (remain outside the hearing room while other witnesses testify) so that the witnesses are not influenced by the testimony of other witnesses. The ALJ may limit or exclude the testimony of witnesses if the testimony is repetitive, irrelevant, immaterial, and/or based solely on hearsay. (For more information on hearsay, see sec. A.6.c. above.)

After both parties have had the chance to present evidence and witnesses, the ALJ will end the hearing.

9. After the Hearing

After the hearing, the ALJ will review the testimony and the exhibits received at the hearing, decide how the unemployment insurance law applies to the facts, and issue a written decision. The ALJ's decision will be based **solely** on what was said and the evidence presented at the hearing.

Ordinarily in a benefits case, you will be sent a copy of the ALJ's decision within **two weeks** after the hearing. **If you haven't received a benefits decision**

within three weeks, contact the hearing office. This is important to avoid missing a deadline of any further appeals of your case.

Contradictory evidence. People are sometimes confused when they get a decision because it looks to them like the ALJ got the facts wrong in the decision. This confusion is usually because two different versions of what happened were presented at the hearing. Especially when the evidence is one person's testimony against another person's, deciding which version of the facts is more credible can be difficult. The ALJ will make the finding of facts as he or she has been convinced they occurred. If it looks like the decision missed some facts or states things you testified didn't happen, that ALJ probably concluded that the testimony of the other party's witness concerning that particular fact was more credible.

It is important to recognize that a decision in a benefit case DOES NOT decide your UI TAX STATUS.

Example: A benefit decision is issued stating that Ann Smith was an employee and not an independent contractor. That decision will not automatically decide that issue for the employer's UI tax purposes. The issue involved in the benefit case is not whether you are liable for UI taxes; it is whether the claimant is eligible for benefits.

10. Further Appeals

The decision of the ALJ may be appealed to the Labor and Industry Review Commission (LIRC), and LIRC's decision may be appealed to the courts. For detailed information, see Parts 2 and 3.

B. TAX OR STATUS CASES

1. Introduction

If you disagree with a determination regarding your liability for taxes or status as an employer, you have the right to appeal the determination by requesting a hearing before an administrative law judge (ALJ). Unlike appeals of benefit cases in which a person claiming benefits is involved, the parties involved in tax cases are the department and the employer.

At the hearing. The department will be represented by an attorney. However, the department's attorney has nothing to do with scheduling hearings or with postponements or other changes once the hearing has been scheduled.

An ALJ, who is an attorney, conducts the hearing and makes sure that both you and the department have the opportunity to present your cases. This is important because the ALJ's decision may change the previous determination ruling on employer liability or status. Having a hearing is like "starting from scratch," as though the earlier determination were never made. Only evidence and testimony presented at the hearing will be considered by the ALJ.

Although the hearing is not a trial, it *is* a formal proceeding. Witnesses are sworn to tell the truth. Statutory and common law rules of evidence are not controlling. Administrative procedural rules on burden of proof, cross-examination, and limits on the use of hearsay evidence are followed.

2. How to Appeal

a. Filing an appeal

- A request to appeal a determination must be in writing. To appeal, you must write to the department stating that you are appealing a determination.
- Include a copy of the determination or clearly identify

the determination by its nine-digit number located in the upper left-hand corner.

- Include dates and times when you and your witnesses and representatives are not available for a hearing. The department will try to accommodate your request.
- Indicate any special needs such as an interpreter or other accommodations needed due to disability.
- You, your agent, or your attorney must sign the appeal.
- The appeal should be mailed, faxed, or delivered during office hours to the hearing office listed on the back of the determination under WHERE TO FILE AN APPEAL.

Deadline. A written request for a hearing (appeal) must be postmarked or received **within 21 days** of the date on which the determination was issued. The deadline is printed on the determination. The person appealing is called the **appellant**. The person responding to the appeal is called the **respondent**.

b. Late appeals

See section A.2.b. above, which deals with benefit cases for information on late appeals.

3. Scheduling and Notice of Hearing

a. Scheduling a hearing date

All hearings are scheduled by the Madison Hearing Office and held in various locations throughout the state.

The hearing office addresses and telephone numbers may be found in Appendix A.

Notice of Hearing. Parties will be sent a **Notice of Hearing** at least 5 days in advance of the hearing. The Notice contains important information you will need to know about the scheduled hearing, including:

- the **time, date, and location of the hearing**;
- whether you will appear in person or by telephone;
- what issue(s) will be taken up at the hearing.

To see **sample hearing notices**, see Appendix B in this section.

Questions before the hearing. If you have questions about the issue(s) before the hearing, contact the hearing office listed on the Notice of Hearing.

PLEASE READ BOTH SIDES OF THE HEARING NOTICE CAREFULLY. To see sample hearing notices, see Appendix B.

The Notice of Hearing will tell you what issue(s) will be taken up at the hearing. Make sure you understand the specified issue(s) and prepare your case with those issue(s) in mind.

b. Scheduling accommodations

When you file an appeal or are notified that the claimant has filed an appeal, **contact the hearing office immediately to request scheduling accommodations** if you have scheduling conflicts in the coming month, such as a pre-planned trip, convention, medical appointment, court date, etc. **The hearing office cannot promise** any specific date and time, but it **may** be able to schedule around the conflict.

However, keep in mind that parties are expected to make the

necessary arrangements to attend the hearing, including taking time off from work or school.

Postponements of scheduled hearings are granted *only for exceptional circumstances* and must be requested as soon as the need for postponement becomes known.

c. Withdrawals

The appellant may withdraw the appeal at any time before a decision on the merits is issued. If the appeal is withdrawn, no hearing will be conducted unless the other party has also filed an appeal. The determination, the last decision made by the department, remains in effect and becomes final without further appeal rights. A withdrawal may be made by phone or in writing to the hearing office listed on the Notice of Hearing.

4. Attendance at the Hearing

a. Introduction

In tax or status cases it is very important for you attend the hearing. These cases require detailed knowledge about your business that probably only you can provide.

Follow the instructions on your hearing notice. You must report in person if you are scheduled to appear in person. If you are scheduled to appear by telephone, you must be available to be reached at the telephone number you provide to the hearing office. Make sure that you **arrange with the hearing office** if you decide to appear in person, **but you have been scheduled to appear by telephone.**

For more information on telephone hearings, see sec. B.5.

b. Failure to appear at the hearing

Appellant fails to appear. If the appellant does not attend the hearing, the appeal is dismissed. The determination, which was the last decision made by the department, remains in effect and becomes final (unless good cause for failing to appear is shown). The ALJ will wait 15 minutes before dismissing the appeal.

Respondent fails to appear. If the respondent does not attend the hearing, he or she gives up the chance to present evidence and testimony at the hearing (unless good cause for failing to appear is shown). The ALJ will wait five minutes before proceeding with the hearing without the respondent.

Good cause for failure to appear. If you do not appear for a hearing and feel that you had good cause for failing to appear, you may provide a written explanation of your reasons for not appearing. This written explanation may be submitted at any time before the decision is issued and within the 21-day appeal period after the decision is mailed. The ALJ will decide whether to schedule a hearing on the nonappearance issue only, or whether to schedule a hearing on the nonappearance issue and conditionally on the merits of the case.

A new hearing on the merits of your case will be scheduled only if you establish good cause for not appearing. A person's illness, an accident, or unexpected circumstances that would prevent a person from attending a hearing may be good cause. Forgetting about the hearing, writing the wrong date on your calendar, getting lost, or getting stuck in traffic generally are not considered to be good cause.

5. Telephone Hearings

A telephone hearing is one in which one or both parties appear by telephone.

Telephone hearings are not typically scheduled in tax cases because of the complexity of the cases and the number of exhibits usually involved.

A telephone hearing may be requested at any time, although the sooner the better. **Be sure to let the hearing office know you are requesting a telephone hearing for a tax case.** This will give the department advance notice to schedule your hearing at a location with telephone hook-ups.

For complete information on telephone hearings, see A.5.

6. Preparing for the Hearing

a. General information

See section A.6., which deals with benefit cases.

If you want to attend a hearing or get a copy of a tape recording of a hearing, be sure you let the person you contact know that you are interested in a **tax** hearing.

b. Settlements and compromises

Under very limited circumstances, the department may settle a pending case or compromise on the amount your business (or you individually) owe in taxes (or reimbursements if you are a reimbursable employer), interest, penalties, and costs. Administrative rule DWD 113 discusses when such agreements may be made.

A copy of this administrative rule may be obtained at most public libraries, at the UI Division web page <http://www.dwd.state.wi.us/uibola/>, or by contacting the UI Bureau of Legal Affairs at (608) 266-3189.

a. Burden of proof and level of certainty required

Who has the “burden of proof” (that is, who must show that a particular thing is true) depends on the issue(s) involved in that particular case. For example, there is a presumption that a worker is an employee (and not an independent contractor), unless you prove to the department that the worker is not an employee. Therefore, it is the employer's burden to prove that the worker is not an employee.

Preponderance of the evidence.

The vast majority of cases involve proof by a “preponderance of the evidence.” This means that whoever has the burden of proof must show that it is more probable than not that whatever the party claims is true. For example, if you are trying to prove that certain wages shouldn't be counted as wages for tax purposes because they were paid for agricultural labor, you must convince the ALJ that it is more probable than not that the work performed was agricultural labor.

b. Witnesses

Ask people who have **firsthand knowledge** of your case (not just what someone told them) to appear as your witnesses. They should have actual, direct, personal knowledge of whatever they are testifying about.

An affidavit or written statement (even if notarized) cannot substitute for the personal appearance of a witness. The witness must be present at the hearing or appear by telephone, be sworn in and subject to questioning by the ALJ and the other party.

Hearsay. The ALJ cannot make any findings based solely on hearsay testimony, that is, testimony not within

the witness's own personal knowledge.

For example, if you want to present evidence that a worker you believe to be an independent contractor has applied for a federal employer identification number (FEIN), you need the worker who filed the application **or** an eyewitness to testify.

Both the worker who filed the application and the eyewitness have direct, firsthand knowledge of what happened (“I took the application to the IRS office,” and “I went with Joe to the IRS office and saw him give them the application.”). Either one can provide direct testimony that the IRS received the FEIN application. An example of hearsay or secondhand knowledge would be if a witness testified that “Joe told me that he filed the application.”).

Repetitious testimony. The ALJ will limit repetitious testimony. If a number of people witnessed a particular incident, you do not have to bring all of them -- choose one or two with the best information.

However, be sure to bring sufficient witnesses to testify about each important part of your case. For example, if your case involves the question of whether six workers are independent contractors or employees, bring witnesses who have firsthand knowledge about your business relationship with each worker or the business setup of each worker. It is **not** enough to bring one of the workers and then testify that the rest of the workers are in the same situation.

Relevant testimony. The ALJ will also not permit testimony from witnesses that is not relevant or not material to the issue involved in your case. Relevant evidence is evidence that tends to make any important fact

more probable than without the evidence.

Subpoenas. If you are not sure that someone you want to appear as a witness will come to the hearing, you can require a witness to attend by getting a subpoena. For more information, see sec. B.6.f. below.

c. Exhibits

You may wish to introduce documents (such as contracts or financial records), photographs, video or audio tapes, charts, objects, sample products, etc., in presenting your case. Again, the ALJ may refuse to accept any such evidence which is not relevant and material to the issue(s) involved in the case.

Photocopies may be submitted, but the original documents should be brought to the hearing to confirm the authenticity of the photocopies. Generally, the person responsible for creating or keeping the records should be present at the hearing to identify, authenticate, and testify about them.

Supplying your own video or audio equipment. If evidence on a video or audio recording is important to your case, **you must supply the equipment** to play the taped material at the hearing and submit the tape(s) as part of the record while the appeal is pending (after which it may be returned to you).

For important information about exhibits at a telephone hearing, see secs. B.5. and A.5. above.

f. Subpoenas

See section A.6.f. above.

7. Prehearing Conferences

ALJs may schedule prehearing conferences pursuant to DWD 140.07. However, they will be used only in the most complex cases.

Following the conference, the ALJ will issue an order about matters such as stipulations about facts (both sides agreeing that certain facts are true), limitations on the number of witnesses, stipulations about evidence, and any other matters that might help the hearing process.

A copy of administrative rule DWD 140.07 may be obtained at most public libraries, at the UI Division web page www.dwd.state.wi.us/uibola/, or by contacting the UI Bureau of Legal Affairs at (608) 266-3189.

8. The Hearing

a. Accessibility

See section A.8.a. above.

b. The basics

Although UI hearings are open to the public, it is very unusual for persons who are not part of your case to attend your hearing. The department will be represented by an attorney from the UI Division. A record is made of the hearing, either by a court reporter or a tape recorder. To make sure that a good record of the hearing is made, it is important to speak loudly and clearly, not rustle papers, and not interrupt, argue or talk at the same time as someone else.

The ALJ will introduce himself or herself, identify the people in the hearing room, explain the hearing procedures, introduce the hearing by summarizing the determination issued by the department, define the issue(s) involved in the case, and obtain brief

statements from both parties about their positions.

The **brief statement** is not intended to include the details of your case; it is only to provide a quick description of what you are claiming. An example would be: "I believe Paul Smith and Phil Jones are independent contractors.

The ALJ will determine the order in which you and any witnesses will testify. You and any witnesses will be sworn in before testifying. The ALJ is responsible for getting all the information necessary to fully understand the facts of your case, to make a good record, and to have all of the information necessary to make a decision in your case. Accordingly, the ALJ will question you and your witnesses.

You (or your representative) may make objections to certain questions. However, you will not be allowed to interrupt or argue with witnesses who are testifying. This is their chance to present their testimony. You or your representative will be given a chance to ask questions of the department's witnesses (called cross-examination) and to present your own testimony. It may be helpful to bring a pen and paper to take notes during the testimony. The department's attorney may also cross-examine you and your witnesses.

Cross-examining a witness involves asking questions about the witness's testimony or getting the witness to provide additional information important to your case. It does **not** involve beginning to provide your own testimony about what happened (you will get your own chance to do that). For example: Joe Smith testifies that you paid him \$500 on March 21. You can ask questions about that (such as: "Did I pay you by check?"), but you cannot argue or rebut what he

said (such as: "But part of that was repaying a loan!") Additional witnesses who have knowledge of the case may also be called. These may include UI Division employees, department auditors, etc. Both you and the department may question these witnesses.

Duties of the ALJ. The ALJ is responsible for controlling the hearing, making sure that the rules of evidence are followed, and protecting the due process rights of both parties. The ALJ may order that witnesses be sequestered (remain outside the hearing room while other witnesses testify) so that the witnesses are not influenced by the testimony of other witnesses. The ALJ may limit or exclude the testimony of witnesses if the testimony is repetitive, irrelevant, immaterial, or based solely on hearsay. (For more information on hearsay, see sec. B.6.d.)

After both you and the department have had the chance to present evidence and witnesses, the ALJ will end the hearing.

9. After the Hearing

After the hearing, the ALJ will review the testimony and the exhibits received at the hearing, decide how the unemployment insurance law applies to the facts, and issue a written decision. The decision will be based solely on what was testified to under oath and the evidence presented at the hearing. A copy of the ALJ's decision will be mailed to you or your representative. If you haven't received a decision within 90 days, contact the hearing office. This is important because deadlines for further appeals are calculated from the date on that the decision was mailed. If you have not received a copy of a decision that was mailed to you, you may miss a deadline.

10. Further Appeals

The decision of the ALJ may be appealed to the Labor and Industry Review Commission (LIRC), and LIRC's decision may be appealed to the courts. For detailed information on further appeals, see Parts 2 and 3.

In tax cases, when LIRC interprets a statute differently than the department, LIRC's interpretation must generally be followed by the department from then on. The department is considered to have "acquiesced" (accepted and adopted) LIRC's interpretation. However, the department may decide not to appeal LIRC's decision but also to "non-acquiesce" in the decision. To do this, the department will send a notice of nonacquiescence to be published in the Wisconsin Administrative Register. (A copy will also be sent to you and to LIRC.) The effect of this is that while LIRC's interpretation and decision is binding in that particular case, the department is not required to follow that interpretation in any other cases.

2

APPEALS TO THE LABOR AND INDUSTRY REVIEW COMMISSION (LIRC)

If the employer, the claimant, or the department disagrees with the administrative law judge's (ALJ's) decision, then the decision may be appealed to the Labor and Industry Review Commission (LIRC), an agency that decides appeals in unemployment insurance and other employment-related claims. LIRC is an independent agency that is separate from the department.

If an appeal to LIRC is filed, it must be postmarked or received by LIRC or the UI Division **within 21 days** from the date on which the ALJ's decision was issued. See Appendix A in this section for the addresses of LIRC and the UI Division Offices.

LIRC will accept faxed appeals as well ((608) 267-4409). The appeal deadline and information on how to appeal a decision to LIRC will be included with the ALJ's decision.

Only the exhibits and a synopsis of the testimony given at the Appeal Tribunal hearing will be considered in the review by LIRC. If you can demonstrate to LIRC that the synopsis is an inadequate summary of the testimony at the hearing, you may request that LIRC listen to the hearing tape or order a transcript. While it is very unusual for LIRC to grant such a request, you can send a written request to LIRC that explains why you feel the synopsis is inadequate and what you think would be added by listening to a tape or reading a transcript.

Any appeals made after the hearing are based solely on the record from the hearing before the ALJ. Except in extremely rare cases, no additional hearing will take place. **LIRC will not accept additional evidence** unless it was unavailable to the party submitting it at the time of the hearing. Except in most tax cases, LIRC decisions do not set legal precedent. (For more information on precedence in tax cases, see sec. B. 10.)

3

APPEALS TO COURT

If the employer, the claimant, or the department disagrees with the decision issued by LIRC, that decision may be appealed to circuit court (and from there to higher courts). Information on the circuit court appeal deadline and how to appeal a decision will be included with LIRC's decision. This is the point at which most people choose to hire an attorney, although one is not required. The deadlines and requirements about what must be stated in an appeal and how it should be filed are strictly upheld -- if even a technical requirement is missed, the appeal will be dismissed.

Again, only the record from the Appeal Tribunal will be considered in a review by a court. The courts are required by law to affirm LIRC's findings of fact if there is any rational basis in the record. Moreover, the courts are required to defer to the conclusions of law and statutory interpretation in agency decisions in all cases except where the issue is one of first impression or the agency lacks special expertise in the issue presented. This is true even if the court feels that the decision could have gone a different way and that LIRC's decision is not the "best" one. Obviously, getting a LIRC decision overturned is not easy, but certainly, it has happened.

APPENDIX A

ADDITIONAL INFORMATION

1. UI HEARING OFFICE AND LIRC ADDRESSES & TELEPHONE NUMBERS
2. "PROS & CONS" OF TELEPHONE HEARINGS

ADDRESSES & TELEPHONE NUMBERS

UI HEARING OFFICES

Eau Claire Hearing Office
715 S. Barstow St., Suite #1
Eau Claire, WI 54701
(715) 836-6567
Fax: (715) 836-1360

Fox Valley Hearing Office
2900 N. Mason St., Suite B

After July 2, 2001
926 N. Westhill Blvd.

Appleton, WI 54914
(920) 832-2769
Fax: (920) 832-5434

Madison Hearing Office
1801 Aberg Ave., Suite A
Madison, WI 53707
(608) 242-4818
Fax: (608) 242-4813

Milwaukee Hearing Office
819 N. 6th Street, Room 382
Milwaukee, WI 53203
(414) 227-4865
Fax: (414) 227-4264

LABOR AND INDUSTRY REVIEW COMMISSION

LIRC
P.O. Box 8126
Madison, WI 53708-8126
(608) 266-9850
Fax: (608) 267-4409

INFORMATION ABOUT APPEAL HEARINGS BY TELEPHONE

General Information

If you or the other party in your case appeal the initial determination you received, either an in-person hearing or a telephone hearing will be scheduled. A telephone hearing is one at which one or both parties participate by telephone. It is not a telephone hearing if only one or more witnesses participate by telephone.

Parties can request that they be allowed to participate by telephone. However, a telephone hearing may be scheduled even if neither party has asked for one. Also, an in-person hearing may be scheduled even if a telephone hearing has been requested. The department will determine if a telephone hearing is suitable in your case.

The department will presume that a telephone hearing is suitable if:

- a. A party is located 40 miles or more from the hearing site, or
- b. Two or more parties are involved and all of the parties have timely requested a telephone hearing in writing after receiving information to consider about telephone hearings.

This does not mean that a telephone hearing will always be scheduled in these cases. **The department may still decide that a telephone hearing is unsuitable.** These are also not the only times a telephone hearing will be scheduled. A telephone hearing may be scheduled for other reasons too.

Things to Think About Before Requesting a Telephone Hearing

There are advantages and disadvantages to telephone hearings. You must decide for yourself whether you think a telephone hearing would work in your case. Things you should consider before requesting a telephone hearing:

- A telephone hearing may be more convenient.
- There is no travel time required & you will not have to arrange for transportation if you have a telephone hearing.
- A telephone hearing may take longer, but may not take longer than an in-person hearing plus travel.
- There may be equipment problems during a telephone hearing (such as: people sometimes have trouble hearing during a telephone hearing, or get cut off.)
- While you will still have to arrange for child care, you may not need child care for as long when you have a telephone hearing since there is no travel time involved.
- Some people do not get as prepared for a telephone hearing which may hurt their case.
- While parties are supposed to exchange exhibits before a telephone hearing, someone may not have seen them all. This may prevent your use of the exhibit, delay your hearing or require that it be rescheduled.
- You must remember to have the exhibits with you at your telephone hearing. Some people lose or misplace them.
- It may be hard to work with a large number of exhibits during a telephone hearing, & it may be harder to tell which exhibits are being referred to during a telephone hearing.
- The judge can prevent the "coaching" of those participating during an in-person hearing.
- There must be enough telephone extensions for all participants to be listening at the same time during a telephone hearing.
- It may be harder for the judge to assess a participant's credibility during a telephone hearing.
- You will need to have a phone in a quiet location, without interruptions.
- Working parties & witnesses participating by telephone may miss less work in order to participate.
- Parties will not meet face to face in a telephone hearing.

Requesting a Telephone Hearing

If you are appealing the initial determination and want the department to presume that a telephone hearing is suitable, you **must** request a telephone hearing when you file your appeal. If you are notified that the other party in your case has appealed the initial determination and you would like the department to presume that a telephone hearing is suitable, you **must** send a written request for a telephone hearing and it **must** be received or postmarked within 5 business days of the day on which the department mailed you the notice that an appeal has been filed. You should give the reasons you want a telephone hearing in your request. Although telephone hearings may be granted if you make your request at other times, you must make your request by these deadlines in order for the department to presume that a telephone hearing is suitable.

If you are scheduled for a telephone hearing, you can still attend in person. If you are going to appear in-person, you should call the hearing office at least 48 hours before the hearing. For more information about telephone hearings, you can read administrative rule DWD 140.11. Administrative rules are available at public libraries, law libraries, website www.dwd.state.wi.us/ui/law.htm or from the Unemployment Insurance Division of the Department of Workforce Development.

UCL-10252-P (R.02/98)

APPENDIX B

FORMS

1. NOTICE OF HEARING

- A. FORM UCL-4616 - HEARING NOTICE (for in-person hearing)
- B. FORM UCL-5801 - TELEPHONE HEARING NOTICE

2. FORM UCB-474 - MEDICAL REPORT TO DETERMINE UNEMPLOYMENT INSURANCE ELIGIBILITY

3. Labor market conditions report

4. UI DRUG TESTING REPORT

PART I - UI DRUG REPORT: OBTAINING AND SEALING THE SPECIMEN (Certification of the person taking the specimen)

PART II - UI DRUG REPORT: PERFORMING THE DRUG TEST ANALYSIS (Certification of the laboratory's performing the analysis)

MADISON HEARING OFFICE
1801 Aberg Ave., Suite A
P.O. Box 7975
Madison, WI 53707-7975
Telephone: (608) 242-4819
Fax: (608) 242-4813

HEARING NOTICE

State of Wisconsin
Department of Workforce Development
Unemployment Insurance

FORM F

Date Mailed:

HEARING NO.

Mailed to:

In the matter of:

Employee:

B.C. & S.S. No.

vs.

Employer:

UI Account No.

This is your **HEARING NOTICE**. An unemployment insurance hearing will be held in the above case

on:

(Central Time)

at:

The following issue(s) may be covered:

BRING THIS NOTICE WITH YOU TO THE HEARING AS IT CONTAINS SITE INSTRUCTIONS.

YOU ARE TO APPEAR IN PERSON AT THE ABOVE LOCATION FOR THIS HEARING. Parties are expected to arrive on time.

Be sure to read the above "Important Message(s)," if any. Also, review the pamphlet "Attending a UI Hearing."

The employee should continue to file weekly claim certifications while this matter is pending.

READ OTHER SIDE OF THIS NOTICE FOR IMPORTANT INFORMATION

Notice also mailed to:

READ THESE INSTRUCTIONS CAREFULLY
YOU ARE TO APPEAR IN PERSON FOR THIS HEARING

- PARTICIPATION:** Arrive at the hearing location prior to the scheduled hearing time.
- If you are the appellant listed on the reverse side, your appeal may be dismissed if you do not appear at the hearing location within 15 minutes of the start time.
 - If you are the respondent listed on the reverse side, the hearing will begin without you if you fail to appear within 5 minutes of the start time.
 - If you are an interested party, neither the appellant nor respondent, your testimony is needed for this issue.
 - Bring any documents relating to this case to the hearing.

If there are unforeseen delays, you will be expected to wait for this hearing to begin.

If you will be represented by an attorney or agent, and they are not listed under "Notice also mailed to" on the reverse side, it is **your responsibility** to immediately inform that representative of the date, time, and location of this hearing. If you have any witnesses, it is also **your responsibility** to inform them of the date, time and location of the hearing. Your witness(es) should attend in person.

REPRESENTATIVES: If you received this form because you are registered with the UI division as the official representative, it is **your responsibility** to inform your client of the date, time and location of the hearing if they are not listed on the reverse side under "Notice also mailed to."

- WITHDRAWAL:** Only the appellant may withdraw an appeal. A withdrawal means that the determination remains in effect. The withdrawal should include the hearing number which appears in the gray shaded area on the reverse side of this Notice. To withdraw, the appellant can choose one of the three options listed below:
- Complete and return the enclosed postage-paid postcard; or
 - Fax a withdrawal to the hearing office listed on the reverse side; or
 - Telephone the hearing office listed on the reverse side.

POSTPONEMENTS: Postponements are not granted for the mere convenience of the parties, their representatives or witness(es). All participants are expected to arrange time off from everyday affairs, including management duties, work, school, vacation, doctor appointments, etc.

INTERPRETER: The hearing office requires the use of its own official interpreters (sign or language) during the hearing. The hearing office provides the interpreter at no cost. If a participant uses or needs an interpreter, contact the hearing office immediately.

SPECIAL NEEDS: Not all hearing locations may be handicapped accessible. If a participant has any special needs or requires a disability accommodation(s), contact the hearing office immediately.

ADDITIONAL INFORMATION: Review the pamphlet, "*Attending a UI Hearing.*" If you have questions, contact the hearing office.

This hearing is your only opportunity to present documents and testimony as evidence in this case. Any future review of this case is based upon the record made at this hearing.

800010 (R) 5/15/88

(Back of Form UCL-4616)

MADISON HEARING OFFICE
1801 Aberg Avenue, Suite A
P.O. Box 7975
Madison, WI 53707-7975
Telephone: (608) 242-4819
Fax: (608) 242-4813

HEARING NOTICE

State of Wisconsin
Department of Workforce Development
Unemployment Insurance

T

FORM F

Date Mailed:

HEARING NO.

Mailed to:

In the matter of:

Employee:

B.C. & S.S. No.

Phone No.

vs.

Employer:

UI Account No.

Phone No.

This is your **HEARING NOTICE**. An unemployment insurance hearing will be held in the above case

on:

(Central Time)

at:

the following issue(s) may be covered:

READ AND FOLLOW THE ABOVE "IMPORTANT MESSAGE(S)" AS TO HOW YOU ARE TO PARTICIPATE IN THIS HEARING. If that message informs you to appear in person, rather than by telephone, **BRING THIS NOTICE WITH YOU TO THE HEARING AS IT CONTAINS SITE INSTRUCTIONS.**

Review the pamphlet, "ATTENDING A UI HEARING."

The employee should continue to file weekly claim certifications while this matter is pending.

READ OTHER SIDE OF THIS NOTICE FOR IMPORTANT INFORMATION

Notice also mailed to:

READ THESE INSTRUCTIONS CAREFULLY

Also, READ THE IMPORTANT MESSAGES PRINTED ON THE REVERSE SIDE
as to how you are to participate (testify) in this hearing.

- PARTICIPATION:**
- If you are the appellant listed on the reverse side, your appeal may be dismissed if you cannot be reached or do not appear in person within 15 minutes of the start time.
 - If you are the respondent listed on the reverse side, the hearing will begin without you if you cannot be reached or do not appear within 5 minutes of the start time.
 - If you are an interested party, neither the appellant nor respondent, your testimony is needed for this issue.
 - Be sure to have ALL documents with you to refer to during the hearing. Immediately send any other documents you want considered as potential exhibits to the hearing office and all other parties (see FORM C for addresses).

If there are unforeseen delays, you will be expected to wait up to one hour for this hearing to begin.

If you will be represented by an attorney or agent, and they are not listed under "Notice also mailed to" on the reverse side, it is your responsibility to immediately inform that representative of the date, time and location of this hearing. If you have any witness(es), it is also your responsibility to inform them of the date, time and location of the hearing.

- REPRESENTATIVES:** If you received this form because you are registered with the UI division as the official representative, it is your responsibility to inform your client of the date, time and location of the hearing if they are not listed on the reverse side under "Notice also mailed to."

- WITHDRAWAL:** Only the appellant may withdraw an appeal. A withdrawal means that the determination remains in effect. The withdrawal should include the hearing number which appears in the gray shaded area on the reverse side of this Notice. To withdraw, the appellant can choose one of the three options listed below:
- Complete and return the enclosed postage-paid postcard; or
 - Fax a withdrawal to the hearing office listed on the reverse side; or
 - Telephone the hearing office listed on the reverse side.

- POSTPONEMENTS:** Postponements are not granted for the mere convenience of the parties, their representatives or witnesses. All participants are expected to arrange time off from everyday affairs, including management duties, work, school, vacation, doctor appointments, etc.

- INTERPRETER:** The hearing office requires the use of its own official interpreters (sign or language) during the hearing. The hearing office provides the interpreter at no cost. If a participant uses or needs an interpreter, contact the hearing office immediately.

- SPECIAL NEEDS:** Not all hearing locations may be handicapped accessible. If a participant in the hearing is to appear in person and has any special needs or requires a disability accommodation(s), contact the hearing office immediately.

- ADDITIONAL INFORMATION:** Review the pamphlet, "*Attending a UI Hearing.*" If you have questions, contact the hearing office.

This hearing is your only opportunity to present documents and testimony as evidence in this case. Any future review of this case is based upon the record made at this hearing.

U00009 (05/18/99)

UCB-474 MEDICAL REPORT TO DETERMINE UNEMPLOYMENT INSURANCE (UI) ELIGIBILITY

Name		Return to	
Social Security Number	Hearing No.		
Date Sent	Date Due	Phone Number	Fax Number

CLAIMANT'S AUTHORIZATION FOR RELEASE OF PATIENT INFORMATION

The purpose of this release is to resolve an UI eligibility claim which would involve sharing this information with department personnel and parties involved in the disputed claim. I hereby request and authorize (**claimant must print treating Health Care Professional's name and address**) _____

to release to the Department of Workforce Development specific information requested on this form together with any supporting documentation or reports from my medical record. I further understand that the information disclosed may include reference to or treatment of alcohol/drug use or mental illness. **This authorization will remain in effect unless I revoke it by written notification.**

Claimant's signature _____ Date _____

TREATING HEALTH CARE PROFESSIONAL'S REPORT

Complete any subsequent sections marked ☒ and the Certification section.

☒ **I. MEDICAL HISTORY**

A. The claimant was under my care from _____ to _____ AND/OR was most recently seen by me on _____.

B. Diagnosis: _____

C. Diagnosis was based on (check all that apply): ☐ Examination ☐ Claimant's Statement ☐ Other (specify) _____

☐ **II. SUBSTANCE ABUSE AND MENTAL ILLNESS** (Check all that apply).

☐ Alcohol Abuse ☐ Drug Abuse ☐ Mental Illness

A. Explain how the condition affects the claimant: _____

B. Was the claimant required to take medication(s) to control the condition(s)? ☐ Yes ☐ No
Medication(s) side effects: _____

C. Did the claimant request to seek admission to a substance abuse or mental treatment facility? ☐ Yes ☐ No
Was the claimant advised to seek admission? ☐ Yes ☐ No
If no, please explain: _____

If yes, was the claimant admitted for treatment? ☐ Yes ☐ No
This treatment was: ☐ Inpatient (Dates): _____ AND/OR ☐ Outpatient (Dates): _____

D. In your opinion, can the claimant abstain from the use of alcohol and/or drugs? (Please explain:) _____

☐ **III. ABILITY TO PERFORM SPECIFIC DUTIES**

A. Was the claimant able to perform the following work: _____
as of ____? ☐ Yes ☐ No

B. Was the claimant advised to seek other work? ☐ Yes ☐ No If yes, date advised? _____

C. What type of work was the claimant recommended to seek? _____

☐ **IV. GENERAL ABILITY TO WORK**

As of _____ was the claimant able to work?

(Check all that apply)

- ☐ No. Claimant cannot work due to the medical condition(s) **reported on this form.**
- ☐ Yes. Claimant may work, but must limit the activities and/or hours of work. (**COMPLETE SECTION V.**)
- ☐ _____ is the date the claimant was/will be able to return to full-time (35 or more hours per week) work without restrictions.
- ☐ Yes. Claimant is able to work full time **without** restrictions.

☒ **V. RESTRICTIONS**

A. Check one of the following classifications of work that the claimant is able to perform:

- ☐ **Sedentary Work.** If the claimant is restricted to lifting, carrying, pushing or pulling less than 10 pounds, **or** is required to sit most of the time and can only walk or stand occasionally, then s/he is available for sedentary work only.
- ☐ **Light Work.** If the claimant is restricted to lifting, carrying, pushing or pulling not more than 20 pounds occasionally, and/or to 10 pounds frequently; **or** is not to walk or stand to a significant degree, but is suppose to sit most of the time, then s/he is available for light work only. If the claimant cannot use arm or leg motions, or use a hand or a foot to a significant degree, then the claimant is available for light work.
- ☐ **Medium Work.** If the claimant is restricted to lifting, carrying, pushing or pulling not more than 50 pounds, and/or is restricted to 20 to 50 pounds occasionally; then s/he is available for medium work. A claimant who is available for medium work would have no restrictions regarding walking or standing.
- ☐ **Heavy Work.** If the claimant is restricted to lifting, carrying, pushing or pulling not more than 100 pounds, and/or is restricted to 25 to 50 pounds frequently; then s/he is available for heavy work. There would be no restrictions regarding walking or standing.
- ☐ **Very Heavy Work.** There are no restrictions regarding very heavy work.

Check all categories of activities that apply to the claimant

ACTIVITY	MUST BE	CAN PERFORM OCCASIONALLY 1 to 33%	CAN PERFORM FREQUENTLY 34 to 67%	NO RESTRICTIONS
	AVOIDED			
Stooping	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Climbing	<input type="checkbox"/>	<input type="checkbox"/>	N/A	<input type="checkbox"/>
Crouching	<input type="checkbox"/>	<input type="checkbox"/>	N/A	<input type="checkbox"/>
Crawling	<input type="checkbox"/>	<input type="checkbox"/>	N/A	<input type="checkbox"/>
Kneeling	<input type="checkbox"/>	<input type="checkbox"/>	N/A	<input type="checkbox"/>

ACTIVITY (degree of ability)

- Balancing ☐ Must not be relied on ☐ No restrictions
- Reaching ☐ Must not extend hand and arms ☐ Limited to 1/3 normal reaching ability
- ☐ Limited to 2/3 normal reaching ability ☐ No restrictions
- Fingering (picking, pinching,
Or fingering activities) ☐ Must be avoided ☐ Limited to 1/3 normal dexterity
- ☐ Limited to 2/3 normal dexterity ☐ No restrictions

B. Indicate how many hours the claimant can work per week based on the restrictions listed on this form or for other medical reasons.

- ☐ 0 to 17 hours ☐ 18 to 23 hours ☐ 24 to 29 hours ☐ 30 to 34 hours ☐ 35 or more hours

ADDITIONAL QUESTIONS FOR THE TREATING HEALTH CARE PROFESSIONAL TO ANSWER: (These questions may be answered here or you may attach documents. *Remember to sign and date this form.*)

ADDITIONAL COMMENTS BY THE TREATING HEALTH CARE PROFESSIONAL: (Any additional information may be provided here or you may attach documents. **Remember to sign and date this form.**)

CERTIFICATION IS REQUIRED. I hereby with full knowledge of the penalty of fine and / or imprisonment, as provided in §943.39 of the Wisconsin Statutes, that this report, together with any attached documents, truly and correctly sets forth the claimant's history, my findings, diagnosis and opinion.

Signature of Health Care Professional: _____

Printed Name: _____

Title _____

Phone number: (_____) _____

Date: _____

UNEMPLOYMENT INSURANCE (UI) DRUG REPORT: OBTAINING AND SEALING THE SPECIMEN

Name		Return to	
Social Security Number	Hearing No.		
Date Sent	Date Due	Phone Number	Fax Number

The purpose of this form is to resolve an UI eligibility claim for the above claimant. The information provided here will be shared with department personnel and the parties involved in the disputed claim.

1. What type of specimen was obtained? _____

2. What was the date and time the specimen was obtained? _____

3. What procedures were used to identify the claimant? _____

4. Did the claimant observe the specimen being sealed? ☐ Yes ☐ No

5. Did the claimant initial or sign the label on the specimen container? ☐ Yes ☐ No

6. Provide any other information concerning the specimen (its obtaining and/or handling). _____

CERTIFICATION is required by an individual who can attest to the accuracy of the information provided.

I hereby certify, with full knowledge of the penalty of fine and/or imprisonment, as provided in Section 943.39 of the Wisconsin Statutes, that this report, together with any attached documents, truly and correctly sets forth the above matters.

Signature _____

Printed Name _____

Title _____

Name of Laboratory or Clinic: _____

Address: _____

Phone Number (_____) _____ Date: _____

Supporting documents may be attached. However, you must still sign this form.

UNEMPLOYMENT INSURANCE (UI) DRUG REPORT: PERFORMING THE TEST ANALYSIS

Name		Return to	
Social Security Number	Hearing No.		
Date Sent	Date Due	Phone Number	Fax Number

The purpose of this form is to resolve an UI eligibility claim for the above claimant. The information provided here will be shared with department personnel and the parties involved in the disputed claim.

1. What was the chain of custody, i.e., handling of the specimen from the time it was received to the time the test(s) was completed? [Be specific as to the date, time and name(s).] _____

2. What type of specimen was tested? _____
3. What test(s) was conducted? _____
4. What procedure was used in conducting the test(s):
☐ The Department of Transportation's **Workplace Drug Testing Program** regulations, 49 CFR, part 40
☐ Other (be specific): _____

5. What was the result of the test(s)—please indicate exact reading, preferably in ng/mL? (You may attach laboratory test reports to answer this question. **However, you must still sign this form.**) _____

6. How long do the metabolites for the specific drug(s) identified remain in a person's system [i.e., how long are the specific drug(s) detectable after use]? _____

YOU MUST PROVIDE A COPY OF THE TESTING LABORATORY'S AND ANALYST'S CERTIFICATION AND/OR CREDENTIALS.

CERTIFICATION is required by an individual who can attest to the accuracy of the information provided.

I hereby certify, with full knowledge of the penalty of fine and/or imprisonment, as provided in Section 943.39 of the Wisconsin Statutes, that this report, together with any attached documents, truly and correctly sets forth the above findings.

Signature _____
Printed Name _____
Title _____
Name of Laboratory or Clinic: _____
Address: _____
Phone Number (_____) _____ Date: _____

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